



DOCKS & HARBORS BOARD PORT FEE REVIEW COMMITTEE MEETING

January 27th, 2015, 6:00 PM
Municipal Building – Room 224

Immediately following the Finance Committee meeting at 5:00 PM

- I. **Call to Order** (6:00 pm in CBJ Room 224- following Finance Committee)
- II. **Roll Call** (David Summers, John Bush, Mike Peterson, David Logan, and Greg Busch)
- III. **Approval of Agenda**
- IV. **Approval of January 6th, 2015 Port Fee Review Committee Minutes**
- V. **Public Participation on Non-Agenda Items** (not to exceed five minutes per person, or twenty minutes total time)

VI. **Action Item**

Tour Broker & Vending Permit ([05 CBJAC 15.070](#))

Committee Questions

Public Discussion

Committee Discussion/Action

MOTION: TO BE DEVELOPED AT THE MEETING

VII. **Future Item**

Loading Permit Fees ([05 CBJAC 15.080](#))

VIII. **Adjournment**

CBJ Docks and Harbors Board
Docks Fee Review Committee Meeting Minutes
For Tuesday, January 6th, 2015

- I. Call To Order – Greg Busch called the meeting to order at 5:05 p.m. in CBJ Room 237.
- II. Roll Call – The following members were present: David Logan (Via Telephone), Mike Peterson, and Greg Busch.

Absent: David Summers and John Bush

Also present were the following: Carl Uchytel – Port Director, Dave Borg – Harbormaster, and Chris Orman – CBJ Law Deputy Attorney.

- III. Approval of Agenda.

MOTION By MR. PETERSON: TO APPROVE THE AGENDA AS PRESENTED AND ASK UNANIMOUS CONSENT.

Motion passed with no objection

- IV. Approval of November 18th, 2014 Docks Fee Review Committee Minutes. Hearing no objection, the November 18th, 2014 Port Fee Review minutes were approved as presented.

- V. Public Participation on Non-Agenda Items – None

- VI. Agenda Topics

- 1. Waterfront Sales Permits (05 CBJAC 10)

Mr. Uchytel said in the packet he included the minutes from November 18th and the Memo to the Finance Committee and to the Board dated December 11th. Within the Memo is the fee structure options that were discussed at the last Docks Fee Review Committee meeting. The plan moving forward is to start with the discussion prior to the memo dated December 11th. This is a result of the December 18th Board meeting remanding this topic back to the Committee because the Board would not take action due to the new language that was inserted suggesting that in the event there are more applicants than there are permits, the Port Director has the authority to assign permits through a lottery system when approved by the Docks & Harbors Board. When that was made clear at the Board meeting, Jeff Fanning from Liquid Alaska testified saying that he was not in favor of this. Discussion within the full Board determined the permit by lottery needed more work. Putting us back to November 18th. Subsequent to the Board meeting December 18th, he has been meeting with CBJ Law and CBJ Finance Director keeping them advised of the direction and the challenges this Committee has. Because of that meeting, CBJ Law Deputy Attorney Chris Orman is here today and also has written a legal brief with strong suggestions on the issuance of the Permits. In summary, CBJ Laws position is Docks & Harbors should not go with a system that allows a perpetual permit. Mr. Uchytel said he has been working with CBJ Law to strengthen the Vendor Booth application with stronger language. The three items for discussion/action would be the remanded direction

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from the Board, the perpetual permitting memo, and make sure staff is on track with the application process for this coming year.

Mr. Busch said he would like to address the items that will need to be changed before the beginning of the season, have discussion from Law on the perpetual permits and look into any regulation changes. Mr. Busch asked Mr. Orman if a three year/three year renewable permit could be in perpetuity similar to a lease, or could they be managed similar to a permanent moorage agreement?

Mr. Orman said his purpose here is not to drive policy it is simply to say yes or no on a legal standpoint. What makes this unique is that it is a permit to do business in an area which is essentially a license. Meaning no one other than the permit holders are allowed to do business in that area, which differentiates this from the lease concept. Similar to the Vendor Booth Permit would be an alcohol license that only allows the holder of that license to sell alcohol, or a special permit to operate a taxi. The Vendor Booth Permit is a privilege that is being granted, which differs from a lease. The concern with a perpetual permit is that it is now a commodity, an interest that is being held and any changes that are made economical could suddenly resolve in litigation. This could be beneficial as a business standpoint for a permit holder, but it is now difficult for CBJ to dictate what goes on in that area.

Mr. Busch asked Mr. Orman if there was any issues with making the permits a three year renewable with a fixed fee or one year permits sold at an outcry auction?

Mr. Orman said his concern is with the word perpetual. He does not see a legal problem with a fixed fee or an outcry auction. He said this would be a policy decision. The only potential concern is that it retains an element of fairness and has equal protection.

Mr. Logan commented that he is not sure where the line is drawn for perpetuity when we offer 35 year leases with a 35 year renewal.

Mr. Orman said the perpetuity is a specific term used for property interest and contract interest. The idea is that perpetuity is like fee simple, or a complete ownership interest in something.

Mr. Uchytel said after talking with Mr. Orman and Mr. Bartholomew, he understands that if you have something in perpetuity there is an assumption that it is harder to manage and regulate. Mr. Uchytel said if his successor down the line where to reduce the number of booths, or other changes, it could limit his successor with a perpetuity permit or license. There is an advantage on how the permits are managed to be refreshed on a periodic basis through an outcry auction or however else Docks & Harbors decides to issue the permits in the future. It resets things and keeps things somewhat level.

Mr. Busch asked would there be a requirement for a three year notice if these permits are three years with a three year renewable?

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Mr. Orman said yes that would be his advice.

Mr. Busch asked if this would need to be provided because there could be a potential for legal standings to seek some kind of a remediation if something changed?

Mr. Orman said that is correct. From a legal perspective, it may be beneficial to change the regulation but to also describe this as a privilege. Example, the permit that is being provided is a use privilege and nothing more and could be revoked at anytime. This could also decrease the exposure if the Board decided to go with a three year permit with a three year renewable. The right remains with Docks & Harbors to manage them, and this would insulate them the most.

Mr. Uchytel asked Mr. Orman to explain the difference between a contractual agreement, a permit and a license? Are they all contracts?

Mr. Orman said the process currently is that someone comes in and applies. After they win the bid, it becomes a license or a permit, which is the same thing. A license is to allow you to drive or sell alcohol where a permit, in this circumstance is allowing you to sell tours. The permit really acts like a contract when they win the bid and for the next number of years, they pay that same amount, and they have certain restrictions. The application process is like the beginning of a Request for Proposal (RFP) process. You are having someone apply and confirm they have that amount of money to bid. After bidding there should be a document signed that is noting the requirements, cost, number of reissues all laid out. This should be looked at as a contract with the permit being the contractual agreement.

Mr. Uchytel asked what is the advantage of having a contract rather than the permit that outlines all the requirements?

Mr. Orman said having a contract is better than just having the permit. Not only during the bid process has someone signed acknowledgment of the requirements to bid, but also after they win the bid and are signing the contract as to their operational requirements.

Mr. Busch asked if there was any questions from the public that were not permit holders – None

Mr. Busch asked the Vendor Booth Permit holders to join the Committee members at the table for discussion.

Vendor Booth Permit Holders in attendance:

Jeff Fanning – Liquid Alaska Tours, Greg Pilcher – Whale Tales, Sky Bonnell – Woo Hoo Tours, and Suparna – Last Chance Tours.

Mr. Busch said in the packet is the recommended regulation changes that came out of the November meeting. The real issue was with the renewable permit there is a potential for lottery, if there was more applicants than permits available. He said this is something that the Committee will not be able to get away from with the legal

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standpoint. He would like to hear from the Vendor Booth Permit holders what their recommendations are moving forward.

Public Questions –

Mr. Fanning said his concern with the lottery is now his business is left up to a draw of the hat instead of his personal bid and how much he would pay. Between the two options of lottery or outcry he would prefer the outcry so he would be in control over how much he is willing to spend.

Mr. Pilcher agreed with Mr. Fanning that he prefers the outcry option over the lottery.

Mr. Fanning suggested to have 11 permits, and every three years one of those permits is drawn by lottery to go up for auction with one permit every year available for auction.

Mr. Busch said Docks & Harbors was already looking at keeping one permit available every year at auction, and get all the permits into a cycle where all nine or ten booths are a three year/three year renewable at auction.

Mr. Fanning suggested to have a lottery for the one that goes up for auction from the current booth permit holders every year, or three years.

Mr. Bonnel said that was in the original proposal he submitted.

Mr. Peterson asked if that would have the potential to drive the price of the permit up?

Mr. Bonnel said even if your booth is picked by lottery and goes to auction, it still gives you the option to pay what you're willing to pay. Mr. Bonnel asked if there is an option for five year permits?

Mr. Busch said five year permits would get into longevity issues with policy changes and so on. Defining a certain length of a permit is not in regulation to provide the Port Director flexibility on how many booths and term length.

Mr. Bonnel asked if the current recommendation is a three year permit with an option for a three year renewal or after three years does it go back to auction.

Mr. Busch said this is what needs to be figured out and it could potentially depend on if there is competition.

Mr. Bonnel said with a three year permit and an option to renew for three years gives you the time needed to qualify for a commercial loan for busses or boats. A longer term like five or six years is better for stability in business. Mr. Bonnel said this also supports the City with all the taxes paid, the employees that come from out of town to work here, rent for housing, and spending 70% of their earning in Juneau.

Mr. Uchytel said some of the permit holders don't have infrastructure. You can have a booth permit without having any investment in buses and boats.

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Mr. Bonnel said you can be just a broker, but you can also invest so you don't just sell other people's tours.

Mr. Busch said if the three year/three year renewable permit is better?

Mr. Bonnel said Ketchikan has three year permit with a three year renewable.

Mr. Busch asked if Ketchikan allows for new businesses to come in?

Mr. Bonnel said no, there is a fixed number.

Suparna asked who she would be bidding against if her permit was picked in the lottery to go back to auction?

Mr. Busch said anyone that would want to get a booth.

Suparna asked if there would be two permits available? The three year/three year renewable and a one year permit.

Mr. Busch said yes.

Mr. Pilcher asked why doesn't having one year permit out for auction every year satisfy the potential for new business. He said he is trying to avoid the lottery.

Mr. Busch said he would like to have consistency for the current permit holders, raise the minimum bid amount and allow for new business.

Mr. Pilcher asked if there was a way Docks & Harbors could add language to the application where they would be protected from damages and the permit holder has more consistency or predictability.

Mr. Orman said Docks & Harbors could add the language that this is a privilege and this permit could be revoked, and someone could still come back and challenge it.

Mr. Peterson said he would like to see private enterprises be able to count on certain expenses. Maybe it won't work for the potential for a new business to come in. If someone new wants to obtain a permit, let them buy a business with a permit that is already established. He would be interested to hear why Ketchikan is not allowing for new business and see how that works.

Mr. Busch asked Mr. Uchytel if allowing for new business to come in was a requirement for having these booths?

Mr. Uchytel read the policy below;

05 CBJAC 10.010 - Policy.

These regulations are intended to implement the following policies:

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- (a) To provide desirable commercial services to cruise ship passengers.*
- (b) To provide for orderly administration by the department of appropriate vending in the downtown waterfront area.*
- (c) To ensure that vending uses shall remain incidental to the principle uses of the downtown waterfront area. The principle uses are pedestrian, vehicular, and recreational access to the docks and waterfront. The director may order the suspension of vending activities as necessary to avoid conflict with the principle uses.*
- (d) To collect revenues in support of management of and improvements to City and Borough harbor and waterfront facilities.*
- (e) To assure fair treatment of persons wishing to sell tours in the downtown waterfront area.*
- (f) Establish a system of tour sales and tour brokerage permits in order to effectuate the purposes listed above. The administration of such system shall be for the benefit of the general public, and the grant or denial of a permit, or any act or omission by the city with respect to such permit is not intended to regulate the private business relationships or to protect the business interests of one party against the other. It shall be the individual responsibility of the permit holders and their clients to enforce their rights and liabilities through civil actions or such other private relief as may be available.*

Mr. Uchytel said this regulation points out to assure fair treatment of persons wishing to sell tours in the downtown waterfront area.

Mr. Peterson said this could be a matter of interpretation. This doesn't mean Docks & Harbors has to allow for new businesses to come in every year and it is not our concern. With regards to fair treatment, have everyone paying the same price every year.

Mr. Busch said if this is a three year with three year renewable, how do we determine who is in that group? Are we running the risk of grandfathering in permits without providing any opportunities for bidders that lost the bid last year who may have bid more knowing the permit would be grandfathered in. In the past there has been more bidders than permits.

Mr. Peterson asked if Docks & Harbors has eleven permits and only nine were filled last year.

Mr. Uchytel said yes, Docks & Harbors does have eleven permits, however, the regulation does not specify how many is required to go up for bid and only nine permits were issued last year.

Mr. Fanning asked what the difference is between leasing a booth and a lease with the Tram?

Mr. Orman said a lease means you can exclude people on that property, and the owner can no longer just remove you from that property unless a written agreement is violated. A lease is less than ownership, but more than a license and agreement, and you have a property right. A permit is saying you can use this, but you don't have the outright ownership interest or property right. If the booths were leased, they would now have property right and interest in that booth and Docks & Harbors could be held responsible for changes that damage their business.

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Mr. Fanning asked if the booths were leased with a property interest, could there be regulations that state if you violate them your lease would be terminated.

Mr. Orman said from a legal perspective leasing the booths is not recommended because of the exposure to Docks & Harbors. He said he supports the permit process.

Mr. Pilcher wanted to know if there was anyway to move forward with leasing a booth?

Mr. Busch said there will be no lease option with CBJ law recommending against it. He would still like to figure out the three year/three year renewable with an opportunity for new businesses to come in if there is competition.

Mr. Bonnel asked if this is basically what was set up before?

Mr. Busch said before the recommendation was that there was a fixed fee and a lottery for new entry.

Mr. Pilcher asked if the lottery affects the existing permit holders or only the new entry people?

Mr. Bonnel said just new entry.

Mr. Busch said the lottery would include all the existing booths.

Mr. Bonnel suggested to leave the auction process the same but to offer the nine permits as three year/three year renewable and the other two permits go to auction.

Mr. Busch said he suggested to have the minimum bid start at \$30,000. Nine would be three year/three year renewable and two would be one year.

Mr. Fanning asked what would happen after six years.

Mr. Busch said they would go back to auction.

Mr. Fanning asked if the fixed fee is no longer on the table?

More discussion followed on fixed fee and how to get the permits cycled in for auction.

Mr. Busch suggested to get rid of the \$42,000 firm fixed fee. He recommended to change the minimum bid to \$30,000 and stay with an outcry auction. Have the three year/three year renewable permits with at least one year permit available every year.

Mr. Bonnel said part of this was that Docks & Harbors was going to make \$42,000 as a set fee. In an open auction he does not think \$30,000 minimum should be in place. It should stay at \$5,000 which in his opinion as to what the market value is. The willingness to pay \$42,000 was stability and everyone was willing to pay more than market value for that. If this is still going to go to auction, he said it should stay at \$5,000. Last year a lot of the booths went for \$20,000.

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Mr. Fanning suggested that \$30,000 was too high also.

Mr. Bonnel said the market value is somewhere between \$20,000 and \$30,000 for these booths.

Mr. Uchytel said how do you determine the market value? What is it based on?

Mr. Bonnel said that is what they went for last year.

Mr. Busch said there were also some that went up to \$60,000.

Mr. Bonnel said it depends on who is bidding.

Mr. Uchytel asked Mr. Bonnel how he determines market value? Is it based on a certain percentage of your take home? Is it a percentage of your profit? How does he know what he is willing to bid before the auction?

Mr. Bonnel said he didn't know.

Mr. Fanning said bids have come in lower than \$30,000

Mr. Uchytel said only last year and three years ago.

Mr. Fanning said but this is the minimum.

Mr. Uchytel said if there are only as many applicants as permits, they would all just pay \$30,000.

Mr. Peterson asked if there was a limit to the amount of permits?

Mr. Busch said no limit, the permit holder will get three booths in three different locations.

Mr. Peterson asked why doesn't the Port Director add more permits?

Mr. Uchytel said the argument the permit holders have is they bid a certain price knowing there are only 11 permits, but now with more, the value for their booth is less.

Mr. Bonnel suggested a sealed bid

Mr. Fanning did not want a sealed bid.

Mr. Peterson said he would just like to create a fair level playing field. He does not want to compete with them.

Mr. Busch said we are providing an opportunity for businesses to sell on the dock. We are not competing with them.

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Mr. Busch asked how does the Committee figure out who gets the right to a permit? He said he is good with the three year/three year renewable permits and an outcry auction for new entrance.

There was discussion on how the permits will be awarded this year and until 2020.

Mr. Busch asked Mr. Uchytel how he thought the permits should be implemented this year and management moving forward?

Mr. Uchytel said his concern is it is already January. The challenge will be to get this approved by the Docks & Harbors Board and the Assembly so it doesn't disturb the businesses wanting to get a permit. The easiest thing to do would be to have the Assembly raise the minimum bid amount to a certain amount and continue with an outcry auction for the foreseeable future. The permits will be a three year/three year renewable. The only change to regulation will be the minimum bid amount. The Port Director will still have the authority to decide how many permits and how often they are issued. An option this year would be an outcry auction for two year permits to get all the permits expiring in 2016.

Mr. Busch provided a recap of the discussion so far;

- The lottery has been eliminated,
- Raise the minimum bid amount to \$30,000, and
- There will be six or seven permits for auction this year depending on interest.

Mr. Bonnel asked if there was still disagreement on the \$42,000 fixed fee?

Suparna said she agrees with Mr. Uchytel. There is a lot more to discuss but not enough time for this year.

Mr. Busch said he liked the fixed fee for consistency sake, but he recommended to change the minimum bid amount to \$30,000.

Mr. Uchytel said up to seven permits would be available for outcry auction this year. Reason being for outcry auction is that it is already in regulation. The minimum bid will be raised to \$30,000, and if only six show up they all will get it for \$30,000.

More discussion followed how long the first permits will be.

Mr. Uchytel said he hears Suparna say she would like all the permits on the same cycle.

Mr. Busch said he doesn't see the need for all the permits to be on the same cycle.

Mr. Bonnel asked if this would still need to go through Assembly.

Mr. Busch said it would change the \$5,000 minimum bid amount to \$30,000.

Mr. Bonnel asked when the earliest the auction could be?

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Ms. Scovill said as soon as it gets through the Assembly.

Mr. Peterson asked if it is possible to move forward with some of the direction here with the language "pending Assembly approval".

Mr. Orman said as long as it is made clear.

Mr. Pilcher asked for clarification, if he bids on a permit, it is a three year permit with a three year renewable option.

Mr. Busch said yes.

Mr. Bonnel said if there are six permits and six bidders, would you pull a booth out?

Mr. Uchytel said they would all get a booth for \$30,000.

Mr. Busch asked Mr. Logan if he agreed with just changing the minimum bid amount to \$30,000, and Mr. Uchytel would manage all the permits with a three year/three year renewable option with an outcry auction recognizing if there are more permits than vendors they would just be paying the minimum bid amount of \$30,000.

Mr. Logan said he is fine with that, but he also wanted to have a one year permit available each year for outcry. This will allow for new entry.

Mr. Busch said he agrees with that.

Mr. Peterson said he doesn't agree with that.

Mr. Bonnel said this is not good for the vendors. Someone new comes in could lower prices.

Mr. Logan said he is fine with the three year/three year renewable option permits.

Mr. Peterson asked for a review.

Mr. Busch said the Committee would like to take out all reference to the fixed fee. Keep in the recommended changes as follows;

05 CBJAC 10.010

(g) To provide reasonable opportunity for entrepreneurs to enter the business market.

05 CBJAC 10.030

(f) (3) No Person, individual, business, or corporation and Violations will result in permit revocation per 05 CBJ 10.080(e).

(f) (5) Remove

05 CBJAC10.040

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*(3) How the permits are awarded. The Port Director will **manage and** award the permits **through** public outcry auction. **In CY2015**, the minimum bid for **an outcry permit is \$30,000**. Remove \$5,000 change to **\$30,000**
Remove (4), (5), and (6).*

Mr. Busch said this is not passed yet until it is passed through the Docks & Harbors Board and Assembly. Mr. Busch said his concern now is if this is not passed by the Assembly in time for this season do we limit the amount of permits so the permits don't go for \$5,000.

Mr. Peterson asked the vendor booth representative if they all understood everything presented?

Mr. Bonnel said he was hoping the fixed fee would have worked.

Suparna said she understood but would like more discussion.

Mr. Fanning asked if more permits can be added or taken away after applications have been accepted.

Mr. Uchytel said he will not be adding more than 11 permits, and if there were less it would benefit the current permit holders.

Mr. Uchytel asked if the Vendor Booth Permit representative's have any more suggested changes to the regulation?

05 CBJAC 10.040

(c) (5) The permit holder may display up to two large signs on a single booth provided the signs do not extend beyond the front profile of the booth. The permit holder may also display one-foot by one-foot **signs where they do not** extend more than six inches beyond the front profile of the booth.

Mr. Fanning asked about transferability in the regulation. Does this include vehicles and land and everything with his business?

Mr. Orman said no. The sale of your business is however you want to sell it.

The draft application change suggested to bring back to the Committee after the Finance Committee to see if there are anymore questions.

MOTION By MR. PETERSON: TO RECOMMEND CHANGES TO THE REGULATIONS DISCUSSED HERE TONIGHT BE FORWARDED TO THE COMMITTEES AND TO THE BOARD FOR FINAL APPROVAL AND ASK UNANIMOUS CONSENT.

Motion passed with no objection

VII. Adjournment - The Meeting adjourned at 7:16 p.m.

05 CBJAC 15.070 - Tour broker and vending permit fees.

- (a) *Definition.* The charge assessed for obtaining a tour broker or tour vendor permit as set out in CBJ Administrative Code Title 05, Chapter 10.
- (b) *Basis for charge.* Permits are issued to qualifying entities by means of a public bid in accordance with CBJ Administrative Code Title 05, Chapter 10. The public bid usually occurs each January.

(Eff. 5-1-2005)

05 CBJAC 15.080 - Loading permit fees.

- (a) *Definition.* The charge assessed for obtaining a loading permit as set out in CBJ Administrative Code Title 05, Chapter 10.
- (b) *Basis for charge.* Permits are issued to qualifying entities pursuant to the regulations set out in CBJ Administrative Code Title 05, Chapter 10. Three classes of permits are issued, "A" permits, "B" permits, and limited loading permits. The "A" and/or "B" permits have two fee components. The first component is assessed to each company obtaining one or more "A" and/or "B" permits. The second component is assessed to each company based on the total number of passenger seats, excluding the vehicle drivers, that are permitted. All fees are assessed on a per calendar year basis.
- (c) *Loading permit fees assessment:*

Permit Type	Fee
"A" or "B" Permit	\$300 per company plus \$7 per passenger seat
Limited Loading Permit	\$15 per vehicle for each permit day; or \$250 per year, whichever is less.

(Eff. 5-1-2005)